

MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

BULLETIN

February 24, 2012

Michelle L. Sokolowski, Town Clerk
195 Main Street
Maynard, MA 01754

RE: **Maynard Special Town Meeting of October 26, 2011 – Case # 6192**
Warrant Article # 4 (General)
Warrant Articles # 2, 3, and 6 (Zoning)

Dear Ms. Sokolowski:

Article 4 - We approve the amendments to the Town by-laws adopted under this Article on the warrant for the Maynard Special Town Meeting that first convened on October 26, 2011.

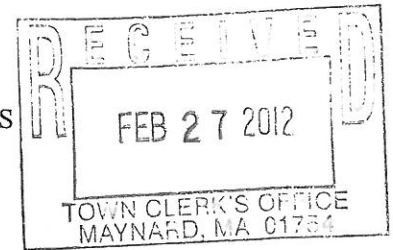
Articles 2, 3, and 6 - We have retained the amendments to the Town's zoning by-laws adopted under these Articles. In the materials submitted to us in connection with the amendments to the zoning by-laws adopted under Articles 2, 3, and 6, the notice of the planning board hearing was not posted pursuant to G.L. c. 40A, § 5. General Laws Chapter 40A, Section 5, requires that the notice of the Planning Board hearing be posted in a conspicuous place in the town hall for a period of not less than fourteen days before the day of said hearing. The Attorney General has elected to proceed under the defect waiver authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. Accordingly, the 90-day period prescribed for the Attorney General's review of the zoning by-law amendments is suspended in accordance with that statute.

A signed copy of Form 299A is enclosed. Please keep a copy for your records and return a second copy to this Office with your certification that a true copy thereof had been posted and published as required by Chapter 299 of the Acts of 2000. A copy of Chapter 299 of the Acts of 2000 is also enclosed.

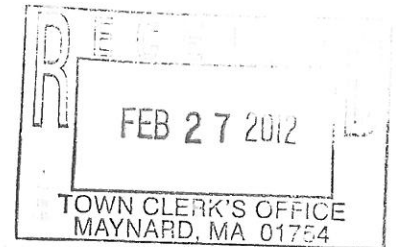
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Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
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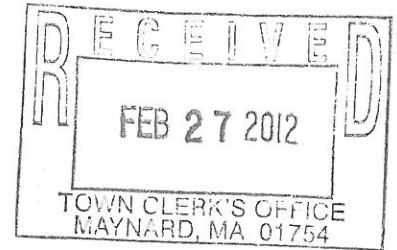
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Attorney General's Notice

*pursuant to G.L. c. 40, § 32, as amended by
Chapter 299 of the Acts of 2000*

**Town of Maynard-- Case No. 6192
Special Town Meeting of October 26, 2011
Articles # 2, 3, and 6**



Attorney General's Authority to Waive Procedural Defects in the Notice of the Planning Board Hearing

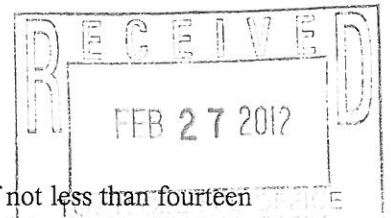
Pursuant to the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, if the Attorney General finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to the form or content of the notice of the Planning Board hearing prescribed by G.L. c. 40A, § 5, or to the manner or dates on which said notice is mailed, posted or published as required by that section, then instead of disapproving the by-law or amendment by reason of any such defect, the Attorney General may elect to proceed under the defect waiver provisions of G.L. c. 40, § 32. Under those provisions, the Attorney General is conditionally authorized to waive any such defect.

Defect Determined in Notice of Planning Board Hearing

The Attorney General has determined that one or more of the notice requirements for the Planning Board Hearing relating to the above Article(s) failed to comply with the notice requirements for such hearing as set forth in G.L. c. 40A, § 5. Section 5 provides in part (with emphasis added):

No zoning by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning by-law is submitted to the planning board by the selectmen or if there is none, within sixty-five days after the proposed zoning by-law is submitted to the selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting cities and towns.

In the materials submitted to us in connection with the amendments to the zoning by-laws adopted under Articles 2, 3, and 6, the notice of the planning board hearing was not posted pursuant to G.L. c. 40A, § 5. General Laws Chapter 40A, Section 5, requires that the notice of the Planning



Board hearing be posted in a conspicuous place in the town hall for a period of not less than fourteen days before the day of said hearing. The posted notice must include the place, date, time, subject matter, and a statement where the text of the proposed by-law amendments could be inspected. Although the town did post a notice that satisfied G.L. c. 39, § 23B, the Open Meeting Law, such notice did not contain all of the information required under G.L. c. 40A, § 5. We specifically note that the planning board hearing notice was duly published in a newspaper of general circulation in the town on September 22, 2011 and September 29, 2011.

Attorney General's Election to Proceed Under the Waiver Provisions of G.L. c. 40, § 32

The Attorney General has elected to proceed under the defect waiver authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Suspension of Review of Zoning By-Law Amendments

The 90-day period prescribed by law for the Attorney General's review of local by-laws is therefore suspended in accordance with the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Posting and Publication of This Notice

The Town Clerk shall post a true copy of this Notice in a conspicuous place in the Maynard Town Hall for a period of not less than 14 days and shall publish a copy hereof once in a newspaper of general circulation in the Town of Maynard.

Filing of Claim That Defect in Notice Was Misleading or Otherwise Prejudicial

Within 21 days of the date on which this Notice is published in a newspaper of general circulation in the Town of Maynard, any resident of the Town of Maynard, or the owner of any real property in the Town of Maynard, or any other party entitled to notice of the planning board hearing may file with the Town Clerk a written statement that the notice defect was misleading or otherwise prejudicial. The statement must set forth the reasons supporting the claim that the defect in the Planning Board Notice was misleading or otherwise prejudicial. This statement must be actually on file with the Town Clerk not later than 21 days from the date on which this Notice is published in the newspaper.

Town Clerk's Certification of Compliance with This Notice

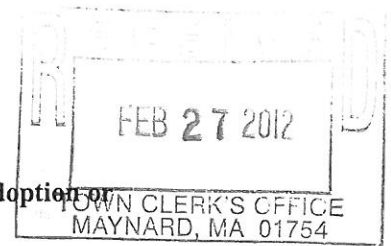
Forthwith after the expiration of the 21-day period in which any claim may be filed, the Town Clerk shall submit to the Attorney General a true copy of this Notice endorsed with a certification of compliance with the publishing and posting requirements of the preceding paragraph, and a certification that either (a) no claim was filed within the 21 day period, or (b) one or more claims were filed within the 21-day period. The Town Clerk shall submit to the Attorney General true copies of any such claim(s).

Resumption of Attorney General's Review

Upon receipt of one original copy of this Notice with the Clerk's certification endorsed thereon, the 90 day period provided for the Attorney General's review under G.L. c. 40, § 32, shall resume; but if the expiration of the 90 day period is less than 10 days from the date on which the Attorney General receives from the Town Clerk such Notice and certification, then the review period shall be extended to the tenth day following such receipt. If no claim is made, the Attorney General may waive any such defect; if any claim is made, however, the Attorney General may not waive any such defect.

Note: By not filing a claim under this provision, a person shall not be deprived of the right to

assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment, as provided in G.L. c. 40, § 32, and in G.L. c. 40A, § 5.



Date: February 24, 2012

Very truly yours,

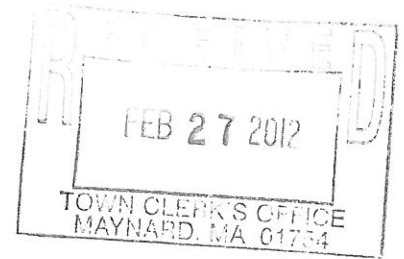
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Chapter 299 of the Acts of 2000

AN ACT RELATIVE TO ZONING BY-LAWS.



Whereas , The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith an alternative procedure for the attorney general to review zoning by-laws, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 32 of chapter 40 of the General Laws is hereby amended by adding the following two paragraphs:-

Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon the running of the 90-day period provided for the attorney general's review pursuant to this section shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

Approved October 18, 2000.

ARTICLE: 4 MASSACHUSETTS BUILDING CODE APPENDIX 120.AA,
“STRETCH CODE”.

TO DETERMINE WHETHER THE TOWN OF MAYNARD WILL VOTE TO ADOPT, OR AUTHORIZE THE BOARD OF SELECTMEN TO ADOPT, THAT PORTION OF THE STATE BUILDING CODE, 780 CMR APPENDIX 120AA, KNOWN AS THE MASSACHUSETTS STRETCH ENERGY CODE (“STRETCH CODE”), AS REQUIRED BY STATE REGULATION. THE KEY PROVISIONS OF THE STRETCH CODE ARE SUMMARIZED BELOW.

Summary of the Massachusetts Building Code Appendix 120.AA, “Stretch Code”

- 1. History.** Appendix 120.AA of the State Building Code, known as the “Stretch Code” was adopted by the Massachusetts Board of Building Regulations and Standards in May 2009, as an optional appendix.
- 2. Purpose.** The optional Stretch Code was developed in response to the call for improved building energy efficiency in Massachusetts. Towns and cities in the Commonwealth may adopt Appendix 120.AA in place of the energy efficiency requirements of the “base” building code. The Stretch Code mandates approximately 20% greater building energy efficiency.
- 3. Green Communities Act.** In 2008, Massachusetts adopted the Green Communities Act, Chapter 169 of the Acts of 2008, the purpose of which is to provide for renewable and alternative energy and energy efficiency in the Commonwealth. The Green Communities Act requires that Massachusetts adopt each new IECC within one year of its release. The IECC is updated on a three (3) year cycle. The next version will be IECC 2012, which is expected to be similar to the Stretch Code and required by the Commonwealth..
- 4. Effect.** The Stretch Code, 780 CMR 120 AA, may be adopted or rescinded by any municipality in the Commonwealth in the manner prescribed by law. When adopted by a municipality the Stretch Code, rather than 780 CMR 13, 34, 61, or 93, as applicable, shall govern.
- 5. Residential - New Construction.** New residential buildings three (3) stories or less will be required to meet an energy performance standard using the Home Energy Rating System (HERS).⁵ The HERS index scores a home on a scale where 0 is a zero-net-energy home, and 100 is a code compliant new home (currently based on the IECC 2006 code). The HERS index has been in use for many years by programs such as Energy Star Homes, LEED for Homes, and by the Federal IRS for tax credits and energy efficient mortgages. HERS ratings are performed by an independent HERS rater, working with the home builder, and then submitted to the local building code official. The Stretch Code requires a HERS index of 65 or less for new homes of 3,000 square feet or above, and 70 or less for new homes below 3,000 square feet (this includes multi-family units in buildings of 3 stories or less). A HERS index of 65 means that the home is estimated to use 65% as much energy as the same home built to the 2006 energy code, or a 35% annual energy savings.

⁵For a summary of the HERS index see: http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_HERS

6. Residential – Home Renovations. Home additions and renovations have two options to meet the stretch code:

- * The same “performance” approach as new construction but requiring a HERS of 80 or less for significant changes to homes over 2,000 square feet, or 85 or less for homes below 2,000 square feet.
- * A “prescriptive” approach, where specific efficiency measures are required rather than HERS index number. This utilizes the Energy Star for Homes program prescriptive requirements, and insulation at least equal to IECC 2009.

7. Commercial –New Construction. The Stretch Code also applies a performance-based code to commercial buildings, with the option of a prescriptive code for small and medium-sized commercial buildings. Buildings smaller than 5,000 square feet are exempt, as are building renovations, and “specialty” buildings – supermarkets, laboratories, and warehouses – below 40,000 square feet in size, due to their widely differing energy needs. These exempt buildings remain subject to the “base” Massachusetts energy code (IECC 2009 and ASHRAE 90.1-2007), and all applicable Massachusetts amendments.

- * Large buildings of any type over 100,000 square feet, and “specialty” buildings over 40,000 square feet are required to meet a performance standard set at 20% below the energy usage of the commonly used ASHRAE 90.1-2007 code, demonstrated through modeling by methods and software approved by the Commonwealth.
- * Medium-sized commercial buildings, which include residential buildings of 4 stories or more, but that are less than 100,000 square feet, have the option of meeting the same 20% better than ASHRAE 90.1-2007 performance standard, or using a simplified, prescriptive energy code.

OR WHAT IT WILL DO IN RELATION THERETO.

To do or act thereon.

SPONSORED BY:	Green Communities
APPROPRIATION:	None
FINCOM RECOMMENDATION:	No Recommendation

The following action was taken:

Voted: That the Town adopt the Stretch Code as a new Chapter XXIX entitled the Stretch Energy Code, in the Town of Maynard General Bylaws as follows:

Section 1. Definitions

- A. International Energy Conservation Code (IECC) 2009 – The International Energy Conservation Code (IECC) is a building code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency.**

Commencing July 1, 2010, the baseline energy conservation requirements of the MA State Building Code will default to IECC 2009 and MA amendments.

- B. Stretch Energy Code – Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115 AA, the Stretch Energy Code is the International Energy Conservation Code (IECC) 2009 with amendments contained herein.**

Section 2. Purpose

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the base energy code applicable to the relevant sections of the building code for both new construction and existing buildings.

Section 3. Applicability

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 13, 34, 61, or 93 as applicable.

Section 4.

The Town of Maynard, seeking to ensure that construction within its boundaries is designed and built above the energy efficiency requirements of 780 CMR, mandates adherence to Appendix 115 AA.

Section 5. Stretch Code

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115 AA, including any amendments or modifications, is herein incorporated by reference into the Town of Maynard General Bylaws, Chapter XXIX.

Section 6. Enforcement

The Stretch Code is enforceable by the building inspector official.

The Finance Committee made no recommendation

Special Town Meeting – October 26, 2011 – Fowler Middle School